IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6176 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

BHIMSINHBHAI MANDANBHAI KHODBHAYA

Versus

STATE OF GUJARAT

---

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. S.K.Patel, learned AGP for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

RULE SERVED for Respondent No. 3

SERVED BY RPAD - (R) for Respondent No. 4

---

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. The petitioner has filed the present petition

under Article 226 read with Articles 14, 19, 21 and 22 of the Constitution of India challenging the order of his detention dated 16.5.2000 recorded by the second respondent in exercise of powers conferred on him by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. On receiving the petition, rule was issued and Mr. S.K.Patel, learned AGP appeared for State. I have heard learned advocates for the parties and perused the papers. Mr. Patel, learned AGP submits affidavit in reply of Mr. P.R.Shukla, Dy. Secretary to Government Food, Civil Supplies and Consumer Affairs Department is taken on record.

3. Learned advocate appearing on behalf of the petitioner has argued at length that the petitioner was not supplied with legible copies of documents and thereby, the valuable right of the petitioner of making effective representation has been taken away by the respondent. For that purpose, certain pages have been referred to by the learned advocate for the petitioner. However, if we look to the document at page-153, it would be apparent that it relates to ration card wherein the name of the fair price shop holder is required to be indicated. Document shows that the name of the shop holder is absent and it has not been printed in the xerox copy. Therefore, the petitioner was unable to know the name of the said licence holder. In that view of the matter, petitioner was not in a position to make effective representation against his detention. It would be clear that if the legible copies are not supplied or in case where the copies supplied are not legible then it would amount to non supply to documents relied upon by the respondent for detaining the petitioner. It is very clear that the above document at page-153 was considered by the respondent for detaining the petitioner under the aforesaid orders. This would make it clear that the document relied upon by the detaining authority, is not found to be legible so far copy supplied to the petitioner is concerned. This shows that the petitioner was deprived of a right of making effective representation against his detention.

4. In this case it would worthwhile to refer to a decision of this Court in Special Civil Application No. 618 of 1999 dated 3.3.2000 (Coram : B.C.Patel,J). Para. 3 of the said judgement reads as follows :

Without addressing about legality of the grounds

> of detention, the learned advocate for the petitioner submitted that the petition is required to be disposed of on a short ground as the papers supplied to the detenu are not legible. In view of this, the detenu is deprived from making effective representation. He further stated that the all papers are not illegible but some papers are illegible and as a result of which, his right has been adversely affected. Mr. Patel, learned AGP after going through the papers, is not in a position to state that all the papers are legible, some of the papers are illegible. Suffice it to say that the same has deprived the detenu from making effective representation and hence the detention order requires to be quashed and set aside. The detention order passed against the detenu is hereby quashed and set aside. The detenu shall be released forthwith if he is not required in any other case. The petition is allowed. Rule is made absolute.

5. It would therefore be clear that if any document is relied upon and considered by the detaining authority for the purpose of detaining the petitioner and if the copy of that document supplied to the petitioner is not legible then valuable right of the petitioner of making effective representation has been taken away. This would be in violation of the principles of natural justice. It would also hurt the statutory right of the petitioner to make effective representation and ultimately, it would hurt the constitutional right under Article 22(5) of the Constitution of India. In that view of the matter, the aforesaid order of detention suffers from aforesaid infirmity and consequently, it is required to be quashed and set aside.

6. For the reasons stated above, this petition is required to be allowed and the order of detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed by the District Magistrate, Junagadh against the petitioner on 16.5.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

(D.P.Buch,J)

(vipul)